

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

POSITIVE GROUP LLC,

Plaintiff,

v.

Civil Action No. 17-C- 159

**MINSYR-OXBRIDGE LLC,
D/B/A Waterfront Place Hotel and
COMPASS BANK,**

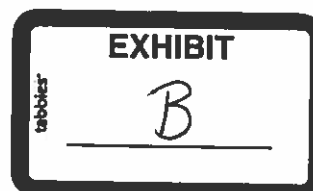
Defendants.

COMPLAINT

Now comes Plaintiff Positive Group LLC, through counsel, and for its Complaint against Defendant Minsyr-Oxbridge LLC and Defendant Compass Bank, hereby states and avers as follows:

PARTIES

- 1) Plaintiff Positive Group LLC ("Positive Group") is a West Virginia limited liability company with a principal office address of 5315 Stone Falls Lane, Dallas, Texas 75287.
- 2) Defendant Minsyr-Oxbridge LLC D/B/A Waterfront Place Hotel ("Minsyr-Oxbridge") is a Colorado limited liability company with a principal office address of 9100 East Panorama Drive #300, Englewood, Colorado 80112.
- 3) Defendant Compass Bank is an Alabama Corporation with its principal office address of 15 South 20th St., Ste 1802, Birmingham, Alabama 35233. Defendant Compass Bank may be a necessary party to this action as it holds a credit line deed of trust against the underlying real property, said document is recorded in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Trust Deed Book 1900 at page 0001. Also Defendnat Compass Bank recorded a first amendment to said credit line deed of trust in the aforesaid



FILED

APR -7 2017

JEAN FRIEND, CLERK

Clerk's Office in Trust Deed Book 2074 at page 432. Defendant Compass Bank is added as a Defendant in this action for the Court to adjudicate and determine the right of the Defendants, if any.

VENUE

- 4) Venue lies in Monongalia County, West Virginia. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this action.

FACTS

- 5) The real property described herein is located in the First Ward of the City of Morgantown, Monongalia County, West Virginia, being 65,059 square feet or 1.4936 acres more or less, and being described as "Lot 3B1r" as shown on the plat of survey prepared by Allan J. Witschi, P.S. No. 587 of Greenleaf Surveying Company, dated January 2, 10214, and entitled "Subdivision of Lots No. 3A, 3B1, 3B2 & 3B3 into Lots 3Ar, 3B1r, 3B2r & 3B3r Waterfront Place Complex", recorded in the aforesaid Clerk's Office in Map Cabinet No, 5, Envelope No. 154B; more particularly described in certain documents of record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia in Deed Book 1493 at page 360, incorporated herein by reference (the "subject property").
- 6) Minsyr-Oxbridge holds a fee simple interest the subject property by virtue of the aforementioned Deed.
- 7) At the request of Minsyr-Oxbridge , Positive Group furnished and delivered labor, materials, supplies, and/or equipment for use in renovations to the structures known as the Waterfront Place Hotel located on the subject property, all of which was used in the erection, construction, repair, removal, improvement or otherwise of certain buildings, structures or improvements on the subject property. (the "subject work")
- 8) The said labor, equipment, and materials were furnished on the dates, in the quantities of, and

at the prices that are listed in Notice of Mechanic's Lien and exhibits attached thereto recorded in the aforesaid Clerk's Office on October 7, 2016 as Instrument No 658357 and incorporated by reference.

9) Positive Group has requested payment for the labor, equipment, and materials it has furnished and performed all conditions precedent to payment.

10) Minsyr-Oxbridge has failed to pay the amount owed.

11) On October 7, 2016, Positive Group caused a Notice of Mechanic's Lien to be filed with the aforesaid Clerk's Office in Mechanic's Lien Book 25, at Page 658, claiming an amount owed for labor, materials, supplies and/or equipment supplied for the project totaling \$1,219,423.16. Positive Group served the Notice upon Minsyr-Oxbridge in accordance with the provisions of W. Va. Code § 38-2-1, *et seq.*

12) Positive Group properly perfected its lien pursuant to W. Va. Code § 38-2-1 *et seq.*

13) Pursuant to W. Va. Code 38-2-36, by Agreed Order entered November 15, 2016 in Civil Action No. 16-P-392, the Court permitted Minsyr-Oxbridge to post bond in the sum of \$249,585.37 plus \$4,991.71 in interest in exchange for the discharge of the mechanic's lien.

14) Minsyr-Oxbridge filed with the Clerk Lienholder's Bond No. 2217483, with the principal being Minsyr-Oxbridge LLC, obligee being Positive Group LLC, surety being North American Specialty Insurance Company, the property being Waterfront Place Hotel, and the bond being in the amount of \$254,577.07.

15) There is now due and owing the sum of \$249,585.37 plus \$4,991.71 in interest.

COUNT I: Quantum Meruit and Quantum Valebant

16) Positive Group repeats and restates the allegations contained in each of the foregoing paragraphs as if fully restated herein *verbatim*.

- 17) Within the past two years, Positive Group has provided labor, equipment, and materials to Minsyr-Oxbridge at the special instance and request of Minsyr-Oxbridge, for which Minsyr-Oxbridge promised to pay Positive Group the reasonable value.
- 18) Minsyr-Oxbridge has failed and refused to pay Positive Group the reasonable value of the work, labor, services and materials rendered.

COUNT II: Foreclosure of Bond

- 19) Positive Group repeats and restates the allegations contained in each of the foregoing paragraphs as if fully restated herein *verbatim*.
- 20) Minsyr-Oxbridge claims some right, title, or interest in or to the bond which claim is junior or inferior to Positive Group's claim.
- 21) Positive Group has a valid, enforceable lien upon the bond.
- 22) Positive Group is entitled to the entire bond, and the bond should be paid over and applied to Positive Group's claim and to the cost of these proceedings;

COUNT III: Unjust Enrichment

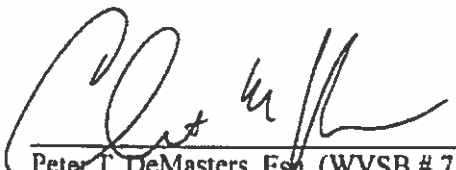
- 23) Positive Group repeats and restates the allegations contained in each of the foregoing paragraphs as if fully restated herein *verbatim*.
- 24) Minsyr-Oxbridge has been unjustly enriched at the expense of Positive Group by and through the labor, equipment, and materials provided to the subject work and for which Positive Group has not been paid.
- 25) To permit Minsyr-Oxbridge to retain the benefit of Positive Group's labor, workmanship, and materials would be unjust.

PRAYER FOR RELIEF

26) WHEREFORE, Positive Group demands judgment against Minsyr-Oxbridge as follows:

- a. Positive Group be adjudged to be entitled to the entire bond, and that the bond be paid over and applied to Positive Group's claim and to the cost of these proceedings;
- b. Positive Group be awarded pre-judgment interest and post-judgment interest as allowed by law;
- c. Damages as a result of Minsyr-Oxbridge's unjust enrichment in an amount to be proven at trial;
- d. Damages for quantum meruit and quantum valebant in an amount to be proven at trial;
- e. Attorneys' fees and costs of this action according to law; and
- f. For any other and further relief this Honorable Court may deem just and proper.

**Respectfully Submitted,
Positive Group LLC,
By Counsel.**



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